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THE BERRIGANS AND HARRISBURG
THE EDITORS and RONALD H. STONE

SAVING THE ENVIRONMENT
ARMAND SCHWAB, JR.

BEFORE WE ELECT BISHOPS
LELAND J. WHITE

THIRTY YEARS OF WHAT?
SAUL MALOFF

THE MYSTERY OF RESISTANCE FRANCE ON TRIAL
PETER STEINFELS and COLIN L. WESTERBECK, JR.

DEATH AND THE JUDGES
ISIDORE SILVER

CORRESPONDENCE: **FEMINI**

'SPAPER NEWS

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NEWS & VIEWS

Some Misty Thoughts

The shifting of gears in Ireland that comes with the takeover of Ulster by the British presents an opportunity for some random thoughts.

1)—*The failure of usually concerned white liberals in this country to respond to the events in Ireland, and particularly to the Derry killings.*

Theirs is a detachment which helps prop speculation that if the Irish were any color other than white, and preferably from a Third-World area, there would be all sorts of Help-the-Irish committees established, supplemented by the customary media devices of full-page ads in the *New York Times* and *Washington Post*, to raise funds, create public opinion for unification, etc. There was not, and the Irish struggle accordingly has maintained a smallish, sectarian cast.

An editorial cartoon appearing in a Providence newspaper about the time of the Derry killings accents the attitude to which I allude. It depicted a middle-aged white looking up from a paper headlining the Irish troubles and speaking across the parlor to his wife: "I can't understand what the fighting is all about. They're both white, aren't they!"

2)—*The inability of the Irish themselves to dramatize their cause.*

Many months into their "assertion," the forces for a united Ireland, North and South, appear unable to give the movement the "lift" of ideology, sloganeering and good-guy dramatization that it needs. All they seem to do is borrow from some other time (the present tactics are right out of 1920-21) and somewhere else (the hymn of the barricades is "We Shall Overcome"). The revolutionaries might be good at bombs and guns, but they are less good at creating that movement of the spirit that seems vital to an insurrectionist movement; viz., Cuba, West Africa.

3)—*The inability of the Irish to put their best foot forward in promoting their cause abroad, and specifically in the U. S.*

Bernadette Devlin, who comes closest to measuring to symbolic leader, visits the U.S., and her trip breaks down (not entirely through fault of her own) on pro-unification factionalism. . . . Irish Foreign Minister Hillery visits Washington for a closed meeting with Senators, Representatives and selected staff, and the trip leaves Washington wondering over Irish political leadership.

Observers at the Washington meeting say Hillery was "most unimpressive." In the words of a Congressional aide of long years, "it was a little like listening to an inarticulate Herbert Hoover; they should have sent Victor McLaglen." Three times Representative Jonathan Bingham of the Bronx is reported to have asked, almost pleaded, with Hillery: "What can we do to help you?" Each time Hillery responded with some vague business about "understanding the situation."

4)—*The press; what is it about its performance that prevents what has the aura of a historically classic struggle from achieving wider interest, understanding and acceptance in the "outside" world?*

Does it have something to do with the fact that the major determiners of what's news seem inclined to view the events in Ireland much as sports reporters do preliminary bouts or consolation contests—of secondary significance? Or is there a failure in the reporting itself? The public seems to be getting two extremes: the angry, exhilarated revolutionaryism of a Pete Hamill (*New York Post*) or the gloomy reporting of correspondents who frequently seem more appalled by the grubby dreariness of Belfast than by the events taking place around them (take your choice of reporters here). One sometimes has the feeling that the Irish happenings would be more sympathetically reported if the venue was aesthetically more congenial. (Maybe someone could arrange for the scene to shift to Killarney or the Mountains of Mourne.)

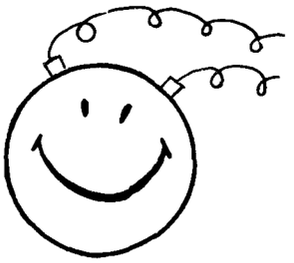
Finally, are there many who sense that what is happening in Ireland just might be a preview of when countries more recently carved up (Germany, Korea, Vietnam), as Ireland was carved up by England 50 years ago, struggle for their reunification. History is being both made and foreshadowed in Ireland, but little of that is coming through.

The Irish themselves could help here, particularly those in the South. But most of what we hear from the Republic these days has to do with tourism and how one can still travel and relax there, with no fear for one's safety. It's not convincing—and hardly inspiring ideologically. Tourism, of course, is important and is hurting, but so also is that thing called Irish idealism. One will recover. I'm not sure about the latter.

Mass Transportation

The philosophy of Francis C. Turner, administrator of the Federal Highway Administration, helps explain not only why 2.8 percent of the federal transportation budget goes to mass transit and 62.9 percent to highways, but also certain of the Nixon Administration's insensitivities on welfare. Following is from a Turner speech before the American Transit Association:

". . . There is an argument often heard that we must provide mass transit facilities in our cities in order to move the aged, the young, the handicapped, and the poor. This conclusion seems to me to be a pretty flimsy justification for such a system if this is



our only reason for it. The elderly can't get on and off of fast scheduled buses or trains, or fight their way in the crowds that surround such a facility; nor can they trudge up or down stairs and long waiting platforms or walk several blocks to the bus line. Even if they did or could, such transit as we generally know it in most cities seldom would carry them to the places where they want to go. And so they depend in most cases on their children or friends to personally take them by auto to their destinations. And the same thing occurs with the handicapped. Those too young to drive are driven by their parents . . . or have access to their own private mass transportation system for most of their needs, paid for with public tax money—the school bus system, which numbers several times as many vehicles as public transit has. For the poor, it would be cheaper to issue them a car, or give them taxi coupons, like food stamps, than to provide an expensive system for them alone."

Odds and Ends

—Declining to make a formal statement on the "complex" implications of Nixon's call for a busing "moratorium," Bishop Joseph L. Bernardin, general secretary of the U.S. Catholic Conference, said the Conference is studying the legislation put forward and expects to make its views known at a later date. . . . Right out there in front once again.

—What's in a name department: the U.S. Office of Education's first coordinator of nonpublic educational services is Dwight R.—gulp! —Crum.

JOHN DEEDY

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CORRESPONDENCE

Feminist Ethicians

Brooklyn, N.Y.

To the Editors: Peter Steinfels' two-part analysis of some current claims for the "feminist ethic" [Feb. 18, Mar. 3] is the type of careful reexamination required to make sense of the shambles of conflicting "revolutions" left over from the late movement of the sixties. His challenge to the rationale offered for repealing abortion laws, and to the alleged sexual basis of social injustice, will win him no points with the movement-licensed purveyors of prepackaged radicalism. His deviation from the current line may, however, help redirect energies to changing the social structures that keep most of us, women and *men alike, insulated from the poor,* whose systematic injury is the definitive passion of genuine radicalism.

(REV.) RICHARD NEUHAUS

Balliston Lake, N.Y.

To the Editors: Regarding the Peter Steinfels column on abortion and who the feminist ethicians represent [Feb. 18], it is necessary to compare the statistics on men and women's differing views with population figures, if you wish to determine a majority. What are the population figures regarding men and women in this country (I understand there are more women) and how do they compare percentage-*wise with the reactions on liberaliza*tion of abortion laws?

However, in an oligarchy, such as South America, or the antebellum South, I would not be surprised to find more peasants or slaves favoring the status quo, simply because there are so many more of them and they do often internalize the values of the master class. The average slave-owner in the South had twenty slaves. If only half or one-fourth of these slaves adopted his values, you already have more slaves than slave-owners favoring slavery! Another similar statistic is that only one-third or less of the colonists

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THE HARRISBURG TRIAL

It was fitting that the trial of the Harrisburg Seven came to an end in Holy Week. Not that any one of the defendants represents Jesus in any exclusive way. Every Christian lives in Christ and imitates him according to his own conscience. Yet the drama of Harrisburg, like all human dramas that spring from conflicts over fundamental values, has parallels in the drama of Jerusalem: an uneasy power structure, threatened beyond reason by fears of conspiracy, conspires to rid itself of its troublemakers once and for all; the instrument of the law is an informer—not simply an honest policeman doing his job, but a man once loved and trusted by the accused who goes to the authorities and says, "What will you give me?" In both cases the right course was not absolutely clear—Jesus may have been a threat to the state, he did become violent in the temple; the Berrigans and their followers may have escalated their resistance to the point where moral prophecy was swallowed up in the very violence they condemned. But, from what we know of the evidence, we don't think so.

The Harrisburg trial will stand as testimony to the inability of this government to understand and cope with the real forces of evil at work in our society. The crime rate rises. Gangsters gun down police and one another in the street. Heroin ravages the ghettos. Yet the Justice Department has little concern for organized crime or gun control; it seems preoccupied with the re-election of the President, planning the Republican convention in San Diego and accommodating ITT. Embarrassed by the Scarlet Pimpernel elusiveness of Father Daniel Berrigan, S.J., anxious to prop up the sagging reputation of loose-talking J. Edgar Hoover, and desperate for some way to discredit the critics of the Vietnam war, the Administration diverted public attention, two years' work and a million dollars to one of the oldest bogeyman stories in the world—conspiratorial priests and nuns.

In the end it has exposed some of the weaknesses in one branch of the so-called Catholic Left: they may be guilty of careless talk, of tossing around ideas in moments of desperation that would make many of their supporters shudder, of flirting with the violence they should deplore. Understandably, the reading of the Father Philip Berrigan-Sister Elizabeth McAlister correspondence filled the courtroom with gloom. Yet, rather than exposing any conspiracy, the government had exposed its own ugliness. It smeared Dan Berrigan by publicly naming him as a co-conspirator, then

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dropping his name; after publicizing the tunnel-bombing and kidnapping gambit it changed the indictment to include old draft board vandalism the defendants had already taken responsibility for. Its own agent provided explosive manuals and offered to furnish a gun. It confronted the defendants with an unfriendly judge in an unfriendly place.

How will the outcome affect the Catholic Left? The Catholic Left is the community of all those whose experience of Christ and study of Christian social teaching have convinced them they must work for radical alternatives to a political and economic system where wealth is hoarded, the weak are oppressed and human life is disregarded—even destroyed—where it should be nourished. This belief does not stand or fall on courtroom verdicts. As long as this war continues, the Catholic Left will resist it. And it will continue to turn its energies against injustice at home. What counts is the verdict of history. Even with all their alleged faults—their "arrogance," "impatience" and "oversimplified" thinking etc. —history will show that the Berrigans and those who stood by them were passionately aware of the great moral crisis of our time, that they faced it with all they had, that they dramatically heightened public consciousness of the immorality of the war and won for the church a glimmer of moral respectability with those young people who had given it up for dead. That is more than can be said for some of their critics and most of the church.

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CONFERENCE ON THE ENVIRONMENT

'ONLY ONE EARTH'

Stockholm

It is generally not a good idea to have great expectations for an international conference, but it would be a mistake to underestimate the importance and potentialities of the U.N. Conference on the Human Environment, which will be held here from June 5 to 16. It will really be something very new: a meeting of the planet's nations to consider together a specific set of threats to their common existence and to take action against those threats. Groups of experts have often talked about mutual problems, but these will be government delegations at the policy-making level. Such delegations meet all the time, but in June they will be dealing with an agenda of highly technical subject matter that has survived a long preparation process, continually tested against the political sensitivities of a 27-nation Preparatory Committee. It is the combination of thorough technical and shrewd political preparation, the conversion of scientific inputs into political decisions, that should set this meeting apart. Moreover, China will be here, so that most of the world's people will be represented. That is also something new.

Something new is certainly needed, because we are faced with a set of converging, galloping crises.

Not so long ago, man was a scarce enough animal so that he did not make too much difference; the earth could survive him. In less than four centuries his numbers have increased sevenfold; now he and his works dominate most of the earth's surface, altering hitherto inexorable chemical cycles and modifying the incredibly complex living systems that together constitute the biosphere—the totality of life and its physical setting. And human population growth continues at its exponential pace.

Urbanization has crowded 40 percent of the world's people into towns and cities. In most parts of the world the result has been increased squalor, tension and social distress. Slums persist at the centers of old cities and proliferate on the fringes of new cities; even where slums are cleared or have been avoided (Sweden is a good example), the economic and social costs attending the urbanization of rural populations are high.

The effects of population growth and urbanization are compounded by the increase in production and consumption and especially by the advent of new technology. On the one hand the pressure on resources is multiplied; on the other hand pollution, the unwanted side effect of human activity, increases sharply, and novel manmade substances of which living things have no experience and with which they cannot cope are spewed out at a pace that is bewilderingly faster than that of biological adaptation.

The litany could be continued, but perhaps the picture is clear enough: a complex of interrelated ecological, technological and social problems, getting worse, and for whose solution there are no precedents in human experience. As problems go, these have been perceived rather quickly, however. Only 10 years after the lonely trumpet call of *Silent Spring,* the U.N. Conference will be a first step toward dealing with them.

Origins

It was in the spring of 1968 that Sweden suggested, through the U.N. Economic and Social Council, a worldwide conference on environmental questions. That December the U.N. General Assembly decided unanimously that a Conference on the Human Environment should be called for 1972. Its aims would be to alert governments and public opinion, to identify problems requiring inter-

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national cooperation, to consider how environmental protection could be combined with development, to support international agencies' environmental efforts and to plan actions at the national, regional and international levels to counteract degradation of the environment. By the spring of 1969 a remarkably comprehensive U.N. Secretariat report had outlined the range of problems to be considered by such a conference. The 1969 General Assembly accepted Sweden's invitation to hold the meeting here and appointed the Preparatory Committee. A year later Maurice F. Strong, a Canadian entrepreneur who had become head of Canada's international development agency, was appointed secretary-general and began to assemble a staff in Geneva.

The Conference agenda was shaped into six "items": planning and management of human settlements for environmental quality; environmental aspects of natural resources management; identification and control of pollutants of broad international significance; educational, informational, social and cultural aspects of environmental issues; development and environment; international organizational implications.

The Geneva secretariat went to work to prepare background papers and a set of "action proposals" to be laid before the delegates in Stockholm. Their raw material included some 80 national reports in which each country set forth its environmental problems, current programs and major needs; dozens of reports from U.N. specialized agencies; proceedings of a whole battery of preliminary conferences held by ad hoc international working groups and independent scientific groups.

Meanwhile, in Stockholm, a Swedish Preparatory Committee headed by former Prime Minister Tage Erlander has been making arrangements for the biggest thing ever to hit this lovely city on the edge of Europe. For lack of a Cow Palace, the Conference will be housed in three places: the ornate Old Parliament Building; the glass and concrete New Parliament Building, to which the Riksdag moved when it went unicameral last year; and Folkets Hus (The People's Building), a complex of congress hall and theaters owned by Swedish labor unions. The sites will be linked by closed-circuit television, a bus shuttle service and 200 "milöjvänlig" ("good-to-the-environment") bicycles. The Swedes have so far reserved some 3,000 hotel rooms for the anticipated influx of 1,200 to 1,500 delegates from 110 to 120 countries, 300 to 500 U.N. employees and about 1,000 journalists. There will be elaborate press facilities, information centers, a Volvo or Saab (with driver) for each delegation and on-site doctors and dentists. Stockholm's late spring will have just burst into its full glory of green leaves, dark blue water and pale blue sky—an environment to remind the delegates that man's works need not isolate him from nature.

Two major threats to the Conference's success were present from the beginning. One was serious, and has apparently been contained: the developing countries' lack of interest in environmental matters. The other is trivial, but may yet damage the Conference: the question of East Germany's participation.

To most poor countries struggling toward economic development, environment and especially pollution seem to be rather effete concerns of a small circle of wealthy industrialized nations. As one Latin American said at a meeting last fall, "We see that it is precisely where the air and water is said to be most polluted that the living standard is highest. We are tempted to ask for some pollution of our own." Some spokesmen have even maintained that pollution control is a diabolical tool with which the industrial world seeks to thwart economic development south of the Equator. Secretary-General Strong therefore spent much of last year traveling through underdeveloped countries to arouse interest in the Conference. A number of meetings were held to highlight the special environmental problems associated with underdevelopment and to confront the economic issues involved in building environmental protection into economic development. The process has been effective: an important new dimension has been added to environmental thinking and a number of developing countries and individual experts representing them have played an increasingly active role in the preparations.

Soviet Participation

The German question still hangs in the balance, and with it even the Soviet bloc's participation at Stockholm. What happened was that the last General Assembly voted to invite to the Conference all U.N. member states and also non-member countries that have participated in other U.N. agency activities— a tricky formula that includes West Germany but excludes East Germany. The Soviet Union and Czechoslovakia thereupon withdrew from Preparatory Committee activities. The question is entwined with current negotiations between East and West Germany and thus with big-power politics. The general feeling is that no one really wants the Soviet Union and Eastern Europe to stay away from the Conference, so that some means must be found to assure East Germany's presence; various quiet negotiations are underway to that end.

The Conference can be called a success even before it opens, so substantive has the preparatory process been.

There has been a mobilization of interdisciplinary expertise in participating countries. Each of the 80-odd nations that produced a report was forced, in greater or lesser degree, to review its problems and the steps taken and not taken to cope with them. In many cases this had simply never been done before. Some of the national reports, including that from the United States, are in effect textbooks on environmental science and policy; others are less impressive, to be sure, but in

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each case there was at least some stimulation of local talent.

Something similar happened within the U.N. specialized agencies: people had to think environmentally, perhaps for the first time. Experts in fish farming, in meteorology, in nutrition and sanitary engineering and ecology all contributed to the Conference documentation. In the process they waged their intrabureaucratic fights for recognition and for primacy in getting whatever funds are eventually made available by the U.N. for environmental activities—but they also learned something about the impact of environmental considerations on their own specialties.

In a number of international working groups, experts and science policy makers from different countries worked out detailed programs for joint international activities. One group, for example, prepared a plan for worldwide monitoring of environmental changes. In this and some other fields the way is largely prepared for action as soon as the Conference gives the word.

Results

The available pool of environmental data has been enlarged. Several meetings of experts on weather and climate, for example, have examined conflicting experimental and theoretical results and been able to write off some catastrophic possibilities (we won't run out of oxygen) and pinpoint reasons for concern (supersonic transports could affect the climate).

Environmental issues have been elevated to the government level. Scientists have been listened to by politicians. Even the economists have now heard about pollution. In some countries it is preparations for the Conference that have finally required some agency to become responsible for environmental matters.

All this has already happened. What can come of the Conference itself?

As might be expected, the underlying issue in Stockholm will be quantitative: how much should be done, how extensive should international activities be, how much limitation of sovereignty should be accepted? Countries that restrict their own industries with stiff anti-pollution regulations would naturally like to see international standards accepted to prevent what they consider unfair competition from regulation-free industry in other countries; environmentally laissez-faire governments are wary of such standards. Underdeveloped countries argue, with some justification, that their rivers can stand more industrial effluents than, say, the sewer-like Rhine. France, England and the U.S. do not want to be told they should not fly an SST; Sweden would like to tell them just that. Brazil does not want Europeans and Americans who long ago cleared their forests telling Brazilians that clearing large areas of the Amazon basin could create a wasteland. . . . And so it goes.

The participants are nevertheless expected to issue some form of "declaration on the human environment." It will have no teeth, of course. Neither have declarations on genocide or human rights, however, and they are generally considered useful. A formal assumption by nations of responsibility for what we are all doing to one another's world would at least be a starting point.

In addition to the declaration, there will be an "action plan" for international cooperation on which the delegates will vote. In a few cases the actions are likely to verge on real prohibitions—of large-scale experiments in climate modification, for example, or of excessive release of critical pollutants such as chlorinated hydrocarbons (DDT and its relatives) and such heavy metals as mercury. Other actions are likely to involve research and the setting of recommended international standards for critical pollutants; establishment of monitoring networks; instructions to U.N. agencies to undertake specific programs in environmental health and similar fields; outlining of a comprehensive approach to preservation of the marine environment. Many other proposals will be in the form of recommendations for institutional and administrative measures to be implemented by national governments. A few formal conventions, perhaps including one on marine dumping, will be submitted to the Conference for action either at Stockholm or later.

Finally, some kind of U.N. machinery is almost certain to be established, if only a continuation of the Conference secretariat, to implement Stockholm's decisions at the international level. Putting the U.N. directly into the environment business could turn out to be a major event, with important implications for the future of the U.N. as well as for the care and preservation of the human environment. ARMAND SCHWAB, JR.

(Armand Schwab, Jr., has been a reporter and editor with the New York Times *and* Scientific American. *He is writing a book in Sweden.)*

COMING

ALAIN WOODROW writes about the wave of prison unrest that has been sweeping through France:

"The main reason for the prison unrest is not so much political as humanitarian. The plain fact is that the great majority of prisons are ancient, overcrowded and understaffed. And this leads us to the root of the problem: the whole penal system is based on fear and repression rather than cure and re-education. Out of 172 prisons and penal institutions in France, 111 have insufficient sanitary equipment; 54 are not properly heated; and 77 are in such a state of disrepair that they ought to be demolished, or entirely renovated."

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THE MYSTERY OF RESISTANCE

PETER STEINFELS

We seem to be awash with movies offering Great Thoughts about man—about his behavior under pressure, his elementary violence, his drive to be free. I cannot judge those films I have not seen, but written accounts give a certain impression of pretentiousness, of child's play with "interesting" ideas, which finally we can take or leave alone. One forgets that three decades ago all of Western civilization lived through the experiences these films pretend to understand. And when you see Marcel Ophuls' *The Sorrow and the Pity*, you will know just how much simpler and how much more terribly complex the reality is. *The Sorrow and the Pity* is over four hours long and its most common image is simply that of a face talking into the camera. But if that is too long and too unassuming, you had better be doing something awfully valuable with your time.

There are many movies within Ophuls' documentary portrait of life in Vichy France. It is a story of capitulation and compromise, when an entire nation, in the words Leon Blum wrote at the time of Munich, found itself "divided between a coward's relief and shame." It is a morality tale of honor and dishonor, and yet it is an exercise in compassion which recognizes the overwhelming pressure of history without leveling responsibility. I watched with shame and anger and, yes, sorrow and pity. Ophuls' message is that contrary to myth most Frenchmen did not resist. They got along. They were not criminals like Laval, but first-things-firsters like the shopkeeper Klein, who advertised in the Clermont-Ferrand paper that his name was not Jewish. We should feel no superiority over the fact that *The Sorrow and the Pity* was barred from French television. I have little doubt that anything cutting so deep would never be seen on our screens: it would be *unbalanced*. We will see *I Am Curious Yellow* on NBC before we see *The Winter Soldiers*.

But there is another film in *The Sorrow and the Pity*, one that left me with a sense of quiet exultation and a yearning to know more. That is the film about why some men resist. Why does the champion cyclist Geminiani recall that there really weren't so many Germans around, while the pharmacist Verdier saw Germans everywhere, even in his sleep? Why do some men, like the stolid peasant brothers Alexis and Louis Grave, simply say "enough," and join the Resistance; while two schoolteachers—decent geezers, to be sure—kept right on teaching though their Jewish colleagues are fired and empty places gape in their classrooms as students go down before German firing squads? There is never any shortage of alibis for playing it safe, even of imposing ones. Good sense is always at hand to whisper in our ears, "be reasonable"; and most men will be her allies. What then is the mysterious source of that "no" which so often alone redeems the human race?

Ophuls suggests an answer of sorts. Or at least several of those he interviews suggest it. The *resistants* were essentially misfits. Emmanuel d'Astier de la Vigerie was a bohemian aristocrat. Dennis Rake, a courageous British underground agent, was a homosexual music hall entertainer; he admits that he acted in part to prove his manliness. Another Resistance leader was a haughty monarchist. De Gaulle himself was a military misfit, his views held heretical, his career sidetracked.

If this were the whole truth, it would at least teach us the limits of attitudes which judge political movements according to personality adjustment. But I am not convinced that this is the whole truth. There were too many misfits who did *not* become *resistants;* or who, like Christian de la Maziere, the young aristocrat whose extreme right-wing views led him to don the uniform of the Waffen SS, ended on the other side. The Petainistes and collaborators were in their own way also a collection of misfits.

The mystery remains. In the same town of Clermont-Ferrand where Marius Klein, shopkeeper, found it was wise to declare himself a non-Jew, Pierre Mendes-France, politician, left-winger, Jew, was put on trial on trumped-up charges of desertion. The courtroom, as Mendes-France describes it in *The Sorrow and the Pity*, was a coliseum of seething anti-Semitism. Obviously little Monsieur Klein had read the signs of the times correctly. Really, what good reason, what historical purpose, would be served if he and his family were made a few more victims because of the happenstance of a name?

And yet in the courtroom where Mendes-France sat feeling the hatred of hundreds, a man arose and went forward to greet him. His name was Emile Kahn. He too was an object of Vichy hatred—he had been secretary general of the left-wing League of the Rights of Man, which had defended political prisoners since the time of Dreyfus. He too was a Jew, and since the Armistice he had been forced to live discreetly in Clermont-Ferrand. Kahn was not a close friend of Mendes-France. He was 65 and had no need to prove his mettle. Why should he expose himself (he wore his Jewishness on his face, as his widow told me decades later) in order to make a gesture of solidarity and say a few words—which the "sensible" evidence hardly supported— to the effect that in the end justice would triumph? Why?

At the center of *The Sorrow and The Pity* is the cruel account, told with a smoldering fury by the biologist Dr. Claude Levy, of the 4,000 Jewish children rounded up in an excess of

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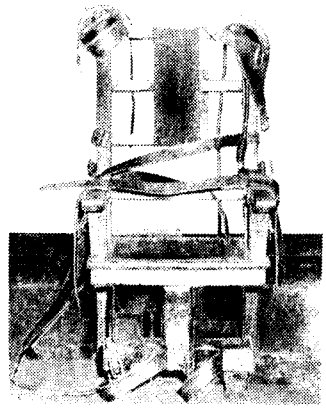
DEATH AND THE JUDGES

ISIDORE SILVER



Cruel and unusual punishment?

On January 17, 1972, the United States Supreme Court heard oral argument in four cases involving the constitutionality of capital punishment. Less than one month later, the Supreme Court of California struck down that state's death penalty in a remarkable 47-page opinion which, even more remarkably, gained the concurrence of six of that body's seven judges. The singular proximity of the dates mentioned above is not fortuitous, and it is evident that the California Supreme Court has become an active participant in the subtle process by which pressures are brought to bear upon the "Marble Palace" in Washington, D.C. Indeed, that court has demonstrated once again—this time to the public—that it is the boldest as well as probably the finest judicial body in the country; *People v Anderson* may well provide the necessary catalyst for a decision holding capital punishment to be unconstitutional throughout the nation. When understood, the story becomes a fascinating example of "judicial politics," a "politics" of intellectual and moral influence, and, moreover, a "politics" fraught with profound national implications.

Legal scholars inevitably disagree about precisely what makes a particular court "great" (as they will about most legal and politico-legal questions). Generally, the "great" courts of the 20th century, the New York Court of Appeals between 1910 and 1930 (led by Benjamin Cardozo), the Second Circuit United States Court of Appeals in the '40s (under Judge Learned Hand), and the Fifth Federal Circuit in the '50s have combined high judicial acumen and a willingness to innovate in about equal degree. Those courts contained leaders who crystalized the unformed and unenunciated—but real—standards of a society in change, and guided change by "creative" use of precedent.

Such a court must, it seems, contain several astute judges rather than just one (although one may dominate) and it must be willing to lead, but not to lead too rapidly and to pay at least minimal homage to precedent (generally by rediscovering "older" precedents or by asking just what vital social interest did precedent profit and whether (a) the interest still existed or (b) the protection was no longer practical because of social changes).

Although the qualities of "greatness" may be mystical, evidence of that phenomenon is easier to discern. Are decisions of particular courts readily—and without fuss—upheld by the United States Supreme Court? Does the Supreme Court adopt the reasoning of the lower court? Does the lower court anticipate later Supreme Court mandates? Do courts other than the Supreme Court cite and rely upon those decisions? Do they win the acclaim of the legal profession? If the answers are "yes," then the court in question has at least a colorable claim to greatness. By these standards, it is now clear, the California Supreme Court has been for at least a decade the finest state court and (despite some close competition from the Fifth and Seventh Circuit Courts) is now probably the finest tribunal in the nation.

Under the leadership first of Roger Traynor and now of Donald P. Wright, the Supreme Court of California has rewritten much of the fundamental law of the land. In the sixties, it anticipated both the fabled (and infamous—to some) *Miranda* decision and the holding in *Stanley v Georgia* (that private possession of obscene material in the home cannot constitutionally be punished) and

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accorded defendants numerous procedural rights in criminal cases far beyond those enunciated by the Warren Court. Those decisions were well reasoned and, indeed, were not subject to the prevailing criticism about the Warren Court's more energetic (often enigmatic) exercises—sloppiness, inadequate analysis, and all too flexible bending of "principle" to achieve the "right" result.

Warren's Shadow

Ironically enough, the landmark California decisions of the '60s were probably inadequately comprehended by legal scholars and interested laymen because of the Warren Court itself. The massive figure of the Chief Justice of the United States and his liberal majority seemed to dominate the judicial landscape and all judicial reform seemed to issue from Washington. The very strength of the liberal majority on the Warren Court served to obscure the accomplishments of its votaries. For instance, Warren rarely credited State Courts with *their* innovations, even when he adopted them or their guiding principles. Perhaps the initial impetus for judicial social reconstruction came from Earl Warren and perhaps the Supreme Court felt that its "bandwagon" was being eagerly joined by some (and only some) lower courts, and perhaps that engendered some resentment (or at least, coolness). But whatever the influence, in fact, of the lower courts upon it, the Warren Court managed to generally avoid acknowledgment.

In the '70s, as the Supreme Court's own activism waned under Warren Burger's aegis, the California court has clarified its claim to greatness. I have already discussed its landmark decision in the *Serrano* case in this magazine (February 18, 1972) and the judicial reaction to that decision has been both immediate and uniformly favorable. Will the tremors of *People* v *Anderson* be as profound? Only time—more specifically, this June, when the four Supreme Court death cases will be decided—will tell, but there are some salient points which can be made now.

The *Anderson* decision was carefully framed to assure that the death sentences of the 104 men on death row in California would be commuted irrespective of any conflicting decision in Washington. The court simply decided the case on the basis of Article 1 section 6 of the California Constitution which prohibits "cruel *or* unusual" punishments, not Article 8 of the Federal Bill of Rights which precludes "cruel *and* unusual punishments." The California court thus avoided the pitfall of seeing a decision overturned by a conservative interpretation of the federal Bill of Rights (as occurred in 1968 when several lower courts which had found that punishment of a chronic alcoholic for public drunkenness to be cruel and unusual were embarrassed by a later, rather inexplicable Supreme Court decision to the contrary). In fact, *Anderson* almost rudely noted that "we do not sanction punishment solely for retribution in California," a position presumably contrary to that of the United States Supreme Court.

Some of the *Anderson* opinion seemed directed toward the problems felt and articulated by certain Justices of the United States Supreme Court on January 17th. From (a) their track records and (b) statements made that day, it appears (and this analysis could be quite wrong) that Justices Douglas, Brennan and Marshall are prepared to take the ultimate step and declare the death penalty unconstitutional. That trio had dissented from a 1971 Supreme Court ruling that uncontrolled jury discretion to impose the death sentence or life imprisonment did not violate Due Process of Law, and it is conceivable that their strong feelings on the subject have left them with no other option than to vote for abolition. From their questioning on the 17th, Justices Burger and Rehnquist seem to be convinced that capital punishment is perfectly constitutional and that remedy for its harshness, if any, lies with Congressional or legislative repeal. Justice Blackmun, one half of the "Minnesota Twins," presents somewhat of an enigma: as lower federal court judge, he expressed some doubt about the constitutionality of the death penalty. On the Supreme Court, he silently concurred with the aforementioned 1971 decision. Although he tends to vote with Burger on criminal cases, this year he has shown some (fleeting) signs of independence and may well have been stung by the substantial scholarly criticism leveled against him. Unfortunately, the odds are that he will stay with Burger on this particular issue. Justice Powell apparently offered little insight into his views on January 17th but his previous public record, his innate conservatism, and his advanced age all apparently conspire toward judicial conservatism. That leaves—as it has so often in the recent past—two "swing" Justices, Messrs. Stewart and White, and parts of the *Anderson* opinion seem to be addressed to their concerns.

Stewart, the author of the 1968 decision in *Witherspoon* v *Illinois*, wherein he found that juries must "express the conscience of the community on the ultimate question of life and death" and so held unconstitutional the automatic exclusion of opponents of the death penalty from trial juries, pressed the state's attorneys particularly vigorously about the "disproportionality" between the vast number of potential capital crimes committed and the rarity of infliction of the ultimate penalty. Justice White concentrated his fire on the relative "unusualness" of the death penalty and seemed to equate "unusual" with "infrequent."

Anderson at several points deals with these two problems. It buttressed the finding of "cruelty" by observing that capital punishment was "being repudiated with ever increasing frequency" by those responsible for imposing (juries) or implementing it. The precipitous decrease in executions—which incidentally antedates the Warren Court's "restrictive" rulings in criminal cases—"persua-

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sively demonstrates that capital punishment is unacceptable to society today." The California statistics cited by the Court—80 percent of those convicted of first-degree murder are sentenced to life imprisonment—may, when combined with the haphazardness of infliction of the death penalty, convince Stewart to join the liberal bloc.

These statistics also are relevant to Justice White's concern with "infrequency." In addition, he could only have been impressed by the factual findings (discussed on January 17th but not in *Anderson* itself) that only one in 12 or 13 cases on a national basis results in the imposition of the death penalty. Perhaps both Justices were sobered by the statistics about the incidence of capital punishment for rape (the issue in one of their cases): 405 of 455 executions for rape between 1930 and 1971 were carried out on blacks, 58 of 61 such executions in Georgia were of blacks, and in 1969 and 1970 there were 190,971 rape arrests in the United States.

Standards of Decency

Ultimately, the Supreme Court will determine "whether the punishment affronts contemporary standards of decency" (to quote *Anderson*). The evidence about "standards" is at best, inconclusive, and the California court trenchantly observed that "public acceptance of capital punishment is a relevant but not controlling factor." Since the issue is a volatile one—one about which public opinion (at least as measured by the polls) often wavers substantially—the Supreme Court will have to take its own reading of the American Character. If a majority of the Court wishes, it can adopt the California approach and argue that the death penalty is "being repudiated with ever increasing frequency" by those called upon to deal with it—and isn't that the "public" that counts?

Several years ago, Barrett Prettyman, a Washington lawyer and son of an eminent federal judge, wrote of the anguish of the nine justices (any nine, at any time) in Washington as they confronted a capital case that

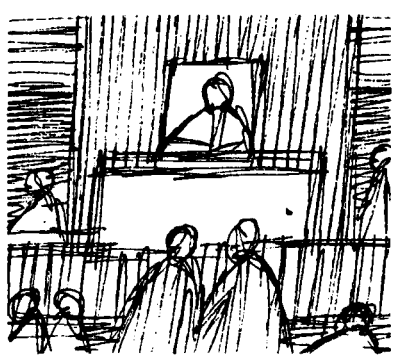
> [I]n the long pull of humanity, one of the phenomena most proudly recorded will be this extraordinary attempt . . . to enhance human dignity through the protection of human life.

One perusing his book, *Death and the Supreme Court,* is struck by the language in one particular case, *Ex Rel Francis* v *Resweber*: "punishments are cruel when they involve torture or a lingering death . . ." (Justice Reed for the majority); "The only thing that makes electrocution constitutional at all is that it is instantaneous and not 'death by installments' " (Justice Burton dissenting); and Justice Frankfurter's concurring opinion upholding the death penalty on the basis of the "consensus of society's opinion which, for the purposes of due process, is the standard enjoined by the Constitution."

Did the California Supreme Court have *Francis* in mind when it condemned the procedures surrounding the death penalty as "lingering death"? Is it appropriate to measure "cruelty," as *Anderson* did, not by the standards of the American people, but by those of "civilized people" (and let the implications fall where they may)? Is it relevant, as *Anderson* said, that the decrease in capital punishment "persuasively demonstrates that [it] is unacceptable to society today?"

Is the California opinion convincing? To those strongly committed to either retention or abolition, the answer is self-evident; to those who are ambivalent (probably the vast majority), the answer is probably "yes." The careful reasoning, the weighing of all the arguments, the finding that 80 percent of those convicted of first-degree murder are sentenced to life imprisonment while 60 percent of the death sentences are reversed by the courts, and the near unanimity of the judgment should tip the balance.

The critical question, of course, is whether the balance in the Supreme Court will be affected. Will Prettyman's dictum that "surely [capital punishment] will be eliminated in time" be vindicated at this moment in history? Will Justice Stewart—who has demonstrated a willingness to acquiesce in "landmark" judgments if some other agency of government sanctions them—be persuaded? Will Justice White—who generally demands invasion of a "basic liberty" be justified only where a "compelling" overriding state "interest" is present—find that the ends of punishment can be achieved by "far less onerous means" (to quote *Anderson*) than the death penalty?



If *Anderson* can convince a majority of the Supreme Court that the death penalty has no penological value, has distorted American criminal procedure (most of the Supreme Court's so-called "restrictive" rulings in criminal cases occurred in, or had their genesis in, capital cases), and is an impermissible abomination in modern society, then the California Supreme Court will be, and will be perceived as, the leading judicial body of our time. In an era of hysteria about "crime," when even political "liberals" run scared on issues of individual liberty, that encomium will be singular, bravely attained and well- deserved indeed.

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BEFORE WE ELECT BISHOPS

LELAND J. WHITE

The present priest-selection methods may be the critical issue

Right now symbolic satisfaction to be derived from electing bishops in the United States would probably quickly sour for lack of practical payoff. Priests and cleric-minded laymen need to pause in their campaign for this approach to reducing arrogance and irrelevance in higher places.

If current restructuring efforts in the Democratic party are taken as paradigm, lower echelon leadership may be more significant. In the church, the priesthood itself may be a more appropriate focus for immediate reform. It may in fact be the case that more responsive leadership can only be developed by a reshaping of the ministry from the ground up. If the election of bishops remains hypothetically attractive, the present priest-selection methods, in particular, may be the critical issue.

To demonstrate the point, a priest friend observed of a recently appointed bishop, "Clearly he is more liberal than his fellow priests." The case, though far from typical, is certainly not isolated. It points to a general predicament. Even if laymen became episcopal electors, candidates would be practically restricted by the shape of the existing presbyterate. And should priests alone be consulted, the cronyism by which bishops promote their own would only be replaced by a new clerical cronyism all the more intransigent because of its greater numbers.

Crisis in the priesthood is not as simply related to the episcopacy as the assumption that giving priests the leadership they want implies. For the credibility gap, the communications difficulty and the authority issue are working for priests in two directions. Confidence is threatened externally. Priests have lost confidence in the bishops' capacity to lead. But also, and probably more importantly, people have lost confidence in priests. Although this second dimension of the problem is less frequently admitted by priests, it is a felt anxiety. It makes the threat to priestly confidence internal as well as external, a question of self-confidence.

Tactically, the priesthood is more ripe, though not by any means more willing, to face an overhaul. For, psychologically, priests have had their self-confidence questioned in a way bishops have not. Armed with a vision of their office from Vatican II, more insulated from criticism from their fellows, bishops are not a little inclined to see their threat as mainly external. But exhaustive sociological and psychological inquiries, with the added burden of a confused theological picture, have left priests feeling their defenselessness. It has also made them defensive. And the assault on the bishops may be seen as defense created by a good offense. How good, is the question.

Priests have taken an important series of first steps. These may be seen as contributing a new sense of solidarity, of being a professional group. Senates and associaciations are significant indications. But the increasing tendency for priests to be subject to the collective judgment of their peers may be more important. Seminary faculty recommendations for ordination now routinely include input from priests outside the seminary and from fellow seminarians. In later assignments personnel boards implicitly pass on the professional competence of fellow priests. Through all these efforts priests may acquire the self-confidence of a relatively independent group.

Professional solidarity, however, will not solve problems for priests that being part of "the club" has failed to solve in the case of bishops. And, if it is far from perfect, the group solidarity and self-determination of the National Conference of Catholic Bishops has a far longer history. Priests and laymen might consider the fact that Cardinal Krol was elected. The dynamics of that election may betray the dangers of any one group within the church community having independence to choose its leadership without correlative power on the part of the whole community to determine membership of the group.

Priests and bishops alike enjoy not only a professional role, in which they collaborate with colleagues. They have an office in the Christian community. At stake today is the adequate representation of the needs of that community, on which alone might be based the confidence of that community in its leadership. Until it is clear that priests are representative of their people, bishops will be free, whether elected or not, to claim privileged insight in regard to what sort of ministry people want. And priests, to the extent that they are honest, will continue to be deviled with the gnawing suspicion that the bishops might just be right.

Processes of election or consultation by lay people in the selection of priests for ordination are required. To justify his office within the Christian community he needs this base. To know what the expectations of that office really are, a practical definition of the ministry by the

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people themselves is essential.

For just as the priesthood cannot be regarded simply as a profession, so the system of professional education for priests is at an impasse. No seminary faculty today feels secure in the picture it gives of the ministry or in the judgment it makes of its students' fitness. Not infrequently this has led to the incredible stance of leaving everything up for grabs. From this comes the not at all uncommon phenomenon of the newly ordained priest who feels he has to determine the shape of his ministry all on his own. The result is little different in those cases where the seminary pretended to provide clear models for the priest-people relationship, for whether the models were old or new, people keep moving out of the boxes prepared for them, leaving the priest to his own devices.

Understandably the Catholic community grows increasingly restive with seminary products. If Sunday Mass attendance has dipped some twenty percentage points in recent years, it may be more than new liturgy and new theology, or even a secular spirit at work. There is discomfort with liberal priests, annoyance with reactionary ones. Chronic cranks in the pews may be ignored. But far too many ordinary, generally open people quietly question whether new-breed or old-breed priests have anything to say to them. And contrary to the assumption that people are rejecting priests because of their positions for or against war, racism, or the like, one finds that it is the feeling of distance, of the priest's having been imposed upon them, that rankles the most.

Elective or consultative processes are required in all assignments of priests. Priests retire, resign, and transfer with no greater frequency, to be sure, than other professionals today. But their doing so, still a novelty hesitantly welcomed by the people, in a context of accelerated change, will be understood only by those who are shown the consideration of active consultation on these moves.

Merely to describe a not especially atypical large parish's shift in pastoral leadership over the last year and a half is to make the case for consultation. Pastor A, in office a couple of years, incapacitated by illness, was replaced by Administrator B for five months. Though not fully recovered, A was restored to office, B reassigned elsewhere. For seven months, increasingly disabled by terminal cancer, A retained his office. After three-months' hospitalization of A, another Administrator C was appointed. On the death of A a month and a half later, C was named pastor. However, two months later the new pastor, C, was promoted, making way for still another new man. All the while the parish was attempting to establish its parish council, working with these different men, who, to put the matter mildly, had quite different approaches to sharing authority.

Much discussion of special ministries has overlooked the extent to which priesthood truly effective in any community is always particular to it. There are indeed theological, even psychological and sociological, constants in the ministry. But it is no more true that any man could be priest in any community than that he might be husband to any wife. Certainly, if among all the pressing responsibilities facing the church in a war-torn, hungry world, the time and energy expended these last few years in changing the idiom of the sacramental life can at all be justified, it is only because at the human level the distinction between substance and form is artificial and relatively insignificant. The substance of a man's ministry must be evoked in its shaping within some particular community.

Community presentation of candidates for ordination should become the norm. Already most dioceses require that seminarians undergo a parish internship before ordination. It would be but a short step to require that the people propose, on the basis of an internship, those men they wished to serve them in their particular parish or other community.

The unreality of some internship programs and of some vocational decisions could be sharply reduced. Seminaries typically guide their students into parishes for internship where it is felt the experience will be most positive and supporting. So long as the training is thought to be for priesthood in some general sort of way this makes good sense. For the intern is thought to be placed for the sake of his training, and not as the inauguration of a more extended ministry in that community. But an ideal or typical parish does not tell the seminarian what sort of ministry he might be called to elsewhere. Were a man required to test his vision of the ministry until he found a community within the church that asked for his services, his decision to be ordained would be better grounded, grounded in fact in their co-operation with his ministry.

Personnel recruitment, in fact, might be largely shifted from bishops, seminaries and personnel boards to parishes and other communities. Minorities, notably blacks, are beginning to demand this responsibility. But campus communities, experimental groups and other special elements of the Catholic population might join more traditional parishes in taking their own collective responsibility to determine the kinds of ministers they need, and to search for them. If there is fear that deacons or sisters might not be accepted if assigned as part of a parish team today, the process by which the lay people themselves wrestle with the issue of what they need might naturally lead to their proposal of just such forms of ministry. In such a context, bishops, seminaries and personnel boards would serve as brokers between prospective workers and their communities.

Such restriction of the role of the diocesan representatives would not necessarily be destructive of the necessary contribution they make to the unity of the church. In fact, it would serve both to define and strengthen all that has been seriously intended in the bishops' control over parishes. For what is suggested is that the process of selecting the particular person for the role of community

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leadership be entrusted to the community, not that the standards and more basic qualifications might be determined at that level.

Responsibility for placement, in fact, seriously restricts the bishops' capacity critically to assess the qualifications of priests at present. It is rare indeed, practically restricted only to priests ready for retirement, that a bishop request a priest's resignation and refuse reassignment. One must admit the charity of bishops who exhaust every conceivable possibility, and then some, to place the misfit priest. But whether such generosity serves the good of the whole Catholic community, or even that of the priest himself, is seriously questionable. This more basic responsibility would be more likely served if the burden of finding a job for the priest rested with the community itself.

Priests and people change. But they do so at different rates at times. In recent years, the experience of a leave

of absence has led some priests to new assignments where they were truly more productive, more capable of leadership. But, in some other cases, it would seem that the return from the lay world reflects only the difficulty that world posed for the priest. Two solutions to this difficulty must be considered. One is the re-education of the priest to meet the changing expectations of the people, to make him useful to the sort of communities he would like to serve. Such concrete demands would be of obviously greater weight than the vague admonitions for continuing education made today. The other solution is to recognize that if the legitimacy of a priest's resignation is granted, the corollary responsibility of the community to force that resignation stands to reason.

Several difficulties must be faced. First is the theological hesitancy to think of a less than permanent ministry. One need not accept the rather weak reasoning that would make the ordination commitment a temporary one. It is as difficult to concede that the priestly commitment can be temporary as that the marital vow might be such. Moreover, it should be clear that in ordination both priest and church make a commitment. But this much said, it is not necessarily the case that the commitment to serve the People of God once made implies the right or personal privilege to hold office.

Second, people have become convinced that there is a great clergy shortage; moreover, that prospects are slim for replacements among the young. What is implied throughout this article is that requirements be stiffened, that people become more selective in both recruiting and retaining men in the active ministry. In answer, let it only be said that the shortage should be seen more in terms of quality than quantity alone. It has yet to be shown that fewer priests, their roles better defined, themselves better prepared, supported by other ministries from deacons and sisters, with new structures permitting wider lay initiative could not achieve at least as much as many more priests operating as they do today. Laymen will probably resist for a while the tendency to be exacting in their demands out of fear of an insufficient supply of pastoral care. But sooner or later, more laymen are likely to reflect the attitude of the man who commented, "It's pretty silly to pay the expense of four years' professional education for a man to distribute communion."

Third, there is the fear that this would place Catholic ministry at the mercy of the people in a way that would restrict its scope to the parochial concerns of the suburbanite. The danger cannot be underestimated. But if priests begin to bring the weight of their new sense of professional solidarity to bear by setting their own standards, proposing a more than parochial vision of the church, this can be offset. Once chosen to lead, all the psychological, sociological and professional support-systems now beginning to be developed would permit the priest to be the agent for what is always more than what people bargain for, the inscrutable Word of God.

Finally, a reorientation of the inquiry into the state of the priesthood today is required. Some very helpful information has been made available through such investigations as those commissioned by the American bishops. It was probably good that the inquiry began where it did. For it did reveal that the American priest psychologically and sociologically cannot be seen as a "sick man." He is as well satisfied with his work as most other American professionals. There are basic complaints that would indicate changes to increase that level of satisfaction. But knowing this it might be well to move from inquiries centered on priestly satisfaction to investigations of effectiveness.

It is indeed strange that sociological surveys, in particular, have one-sidedly focused on the priest's view of himself. It may be this sociological bracketing of the people that has led to the equal obsession on the part of priests with problems related to bishops. More attention to the quality of the relationship between priest and people would make rather secondary the need for approval from above. Further, focusing on the task of shaping the church's mission with constant input from the people would give a clear basis from which the priest could then appeal, on behalf of his people, for support from the bishops. Priests formed in this experience would be a fresh input in the hierarchy. Their election as bishops might make a difference.

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Commonweal this Spring

To what extent will things start changing as a result of the Nixon Russia visit next month? Will organized labor's withdrawal from the Pay Board thwart the Administration's attempts to slow down inflation by restraints on prices and wages? What can reasonably be expected of the British takeover of Northern Ireland? Who is emerging as the leading Presidential candidate among the Democrats as the various state primaries unfold—and what main issues are likely to be at stake in the election itself? *Commonweal* will be scrutinizing questions such as these in coming weeks.

Week by week *Commonweal* brings its readers the wide range of views of writers of eminence in their respective fields, among them: Justus George Lawler, Nat Hentoff, Jean Bethke Elshtain, Kilian McDonnell, Murray Polner, Michael Novak, Saul Maloff, Colin L. Westerbeck, Jr., Gordon Zahn, Gerald Weales, John Horgan, George Elford, Matthew M. Mestrovic, Peter J. Ognibene, Brian Wicker and Peter Steinfels.

Commonweal also throws light on the questions of the day through its perceptive reviews of current books by such readable and competent critics as: Todd Gitlin, Michael Zeik, Steven V. Roberts, Richard Kostelanetz, Martin E. Marty, Richard P. McBrien, Arlene Swidler, Garry Wills, Anne Fremantle, Bernard Murchland, Jacob Needleman, Roger Shinn, Arthur A. Cohen, John Ratté, Joseph Fichter, Leonard Kriegel, Linda Kuehl, John Heidenry, Eugene Kennedy, Jack Riemer and Nora Magid.

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FRANCE ON TRIAL

THE SCREEN

All arts tend to run a course from praise to dispraise. What begins as Dionysian revelry or miracle plays ends as tragedy. Certainly no art form has been a purer example of this than documentary film, which has only recently progressed beyond celebration of its subjects. Since the earliest days of film, governments have been the main employers of documentarians. The greater glory of national ideologies, agencies and public works projects has been served by the greatest documentarians: Dziga Vertov (Russia), Leni Riefenstahl (Nazi Germany), Pare Lorentz (U.S.A.) and John Grierson (England and Canada). In a few cases documentarians have been able to work independently somewhere beyond the grasp of big government. Robert Flaherty, who is perhaps the greatest documentarian so far, did this by becoming an explorer and ethnologist with his camera. But his example only proves the rule, for no documentaries eulogize their subjects more readily than his.

But now a new documentary from France, Marcel Ophuls' *The Sorrow and The Pity,* proves how persuasively documentary film can also take a critical and dissenting position. Ophuls' film cannot be said to inaugurate such a counter-tradition. The tradition was already there. In our own country, Frederick Wiseman and Emile de Antonio have each been doing comparable work since the mid-1960's. In France itself, George Franjus' pacifistic *Hotel des Invalides* suggested way back in 1952 that documentaries might be used to make trouble. But no one has before made this sort of film with the authority and sense of controversy that Ophuls has.

Ophuls' film is about the period of the German occupation of France during World War II, and his premise is an undeniable but much ignored fact: France was the only country in Europe to adopt an official government policy of collaboration with the Nazis. What Ophuls wished to investigate further was, to what extent did the French collaborate in fact with the Nazis, and why? The difficulty of finding answers to such a question is demonstrated by two film clips that frame the film. Toward the beginning we see some old newsreel footage that Ophuls turned up of Maurice Chevalier entertaining the troops —German troops, apparently. But toward the end Chevalier returns to swear that he only entertained hospitalized French POWs during the Occupation. It seems that almost everyone in France was really in the Maquis, the Underground. At one point Comte René de Chambrun, the son-in-law of Vichy Prime Minister Pierre Laval, even claims that Laval was part of the "Resistance" in the true sense of the word.

The newsreels and old German propaganda films

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Ophuls has discovered reveal a good deal of collaboration, but not half so much as is revealed in the interviews Ophuls has made with those who lived through the period. In a four and a half hour film, Ophuls has time to interview at length many people, thirty-four in all. Some are important men who are sympathetic to Ophuls' inquisitiveness. Pierre Mendes-France, for instance, gives the clearest-cut answer to why France collaborated. "Anglophobia and anti-Semitism are always close to the surface in France," he explains, and many people, especially the career military, felt "better Hitler than Leon Blum and the Jews."

But Ophuls is even better at finding people who would undoubtedly rather not be interviewed and getting them to cooperate anyway. Although Ophuls doesn't do all the interviews himself, the technique, which I assume to be his, is consistent. The interviewer has a way of volunteering just those facts which the person being interviewed is trying to hide or overlook. The people Ophuls has approached for interviews often seem to assume that, since Ophuls' crew is from French television (which commissioned but refused to show this film), the interview will be as bland and uninformed as those done on television. This may be the reason for the receptiveness that these people showed Ophuls and probably came to regret. Marius Klein, a Clermont-Ferrand merchant, remains affable, though he is obviously nonplussed when suddenly reminded that in the early 1940s he placed a newspaper ad assuring his customers he was *not* a Jew. Comte de Chambrun is stunned when Ophuls can confidently refute statistics that Chambrun has just cited to prove few Jews perished under the Petain-Laval regime.

The sum total of the charges made in the film against France is pretty grave. Former Nazi Captain Helmuth Tausend states categorically that the French in Clermont-Ferrand, where he was in charge, gave him no trouble whatsoever until 1943. Jacques Duclos, who was head of the clandestine Communist Party, believes that the Gestapo could not have been so effective against the Resistance if it had not had the full cooperation of the French police. A farmer and Resistance fighter named Grave says he knows that one of his own neighbors denounced him to the Nazis and landed him in a concentration camp. A British undercover agent goes further: denunciation by members of one's own family was, in his experience, common. And then there are lawyer Henri Rochat and biologist Claude Levy, who report French initiative in atrocities as extreme as anything the Nazis did on their own.

In light of all this, the most surprising aspect of the film is that some of the "sorrow and pity" here is reserved for the collaborationists themselves. Ophuls does not hesitate to show us how viciously they were attacked after the war, nor does he flinch from including old newsreels in which some of the former members of the Maquis who have been most charming in the interviews make speeches that urged total and bloody vengeance. Though there may have been perfect justice in these scenes, they are hardly calculated to make us hate the collaborationists more. The whole process makes one think of the Reign of Terror. But more than this, it is the interviews with collaborationists that often make them seem pathetic rather than loathsome. The dispraise Ophuls has for the French is at these moments very much the sort we sense at a tragedy. Ophuls' predicament is a bit like Aeschylus' when he was writing *The Persae* to commemorate Greek victory over the Persian tyrant Xerxes. Aeschylus could not help sympathizing with Xerxes; and like Xerxes, the collaborationists made a misjudgment so great, and have in many cases suffered for it so long, that it is impossible to despise or condemn them still.

Ophuls never speaks to us directly in his film, but he does imply strongly the ambivalence of his feelings about the collaborationists. He does so in the way he edits his film to create parallels and contrasts among the interviews. What the person interviewed is saying is sometimes not so expressive as some little thing he does. At one point, for example, the farmer Grave is reminiscing about the Maquis in his kitchen. A friend comes in by chance, and Grave prevails on him to join the discussion. Later a similar situation arises in another interview—one made with a Madame Solange, an admitted admirer of Petain who was accused of collaboration after the war and tortured by the liberation forces. Again someone wanders in, but this time the person is nervously chased away and the door is bolted.

It is impossible to feel any compassion for a man like de Chambrun. But we feel that Madame Solange's life, with whatever isolation and loneliness is implicit in her gesture, is more typical. People like her have perhaps been affected by the war more profoundly and permanently than anyone else. Emile Couladon, known during the war as Col. "Gaspar," one of the most daring Resistance leaders, is interviewed riding around in his luxury car—a Mercedes, ironically. Not far away, in Germany, Capt. Tausend allows himself to be interviewed at his daughter's wedding reception where he contentedly smokes cigars with his family gathered around. Neither of these former enemies has cut himself off from his fellow men by his role in the war the way that Christian de la Maziere has.

De la Maziere, an aristocrat, is interviewed while taking his ease in a palatial suite of rooms. As his story unfolds, however, we learn that he is not master of this house. He was a French combat pilot who volunteered for the "Charlemagne" group of the Waffen SS and fought with the Nazis on the Eastern Front. 7,000 Frenchmen like de la Maziere fought for Germany in the Charlemagne division. Only 300 of them survived the war. But while de la Maziere is telling us this, Ophuls reveals that this former French Nazi is only a tourist in the castle where we now see him interviewed—a castle that once served

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as a seat for the Vichy Government.

The Hohenzollern castle that de la Maziere is visiting represents all the values he thought to preserve and inherit in France through his service of Nazism. That Ophuls should film him as a tourist in the castle, an outsider, is an appropriate irony. Compare the circumstances of de la Maziere's interview with those of Matheus Bleibinger's. A former Nazi foot soldier stationed in Clermont-Ferrand, Bleibinger is interviewed in a lovely beer hall in his native Bavarian village. At one point he rubs his hand thoughtfully along the buff of his lederhosen and remarks that Hitler's defeat was all for the best. If it hadn't happened he fears he might be on some rotten garrison duty right now in Africa, or perhaps America. He clearly prefers Bavaria, as well he might. He's home, which is someplace de la Maziere, Madame Solange and probably many other Frenchmen will never be again.

COLIN L. WESTERBECK, JR.

(For more on this, see the column by Peter Steinfels which begins on page 135.)

BOOKS

THIRTY YEARS OF *WHAT?*

SAUL MALOFF

HOWEVER fervent a man's professions of devotion to political liberty—his readiness to defend with his blood and sacred honor the right of others to hold those opinions he most detests, and all that—the hated ideology may so stick in the craw that he cannot quite bring himself to grant, much less insist on, its equal claim to contend with other ideologies as an inarguable matter of right. Else how is one to account for so strange a paradox as this: that Eric Bentley, a civil libertarian of imposing credentials, should have gone to the immense labor of plodding through scores of thousands of pages of testimony reposing in the moldering files of the House Committee on Un-American Activities, during the decades when it lay over the land like a pestilence, and assemble from that reeking bog a thousand-page selection which, immediately upon completing his heroic labors, becomes an indispensable sourcebook for that long, sickening episode in the history of nativist pathology—and in an Afterword, surveying the transparent record spread out before him, refuse its lessons and to that degree submit to its mythology?

Obviously it's not a question of intelligence, or even of good will but of a final commitment to the desperately difficult ordeal that lies at the heart of democracy: that of shaming the devil by giving him his due, and, when he has been caught out in his sins, inviting him to sin harder. In his summation, Bentley puts the question, both retrospective and prospective, to us: "How should those of us who are 'unfriendly' to such a Committee behave when subpoenaed by it?"—and then sounds the fanfare: "I have been saying that, traditionally and essentially, radicals disdain to conceal their views. The simplest thing for them to do, then, would be to go to Washington and answer all questions." He concedes, of course, that this "would be to recognize the Committee's authority or at least existence." He grants that

Thirty Years of Treason

ERIC BENTLEY

Viking, $20

honorable dissenters took the "Einstein Pledge" of absolute conscientious objection, which often took the form of the Fifth Amendment; but, in the same breath, he insists invidiously on the distinction between "good faith" and "bad faith." The CP, he argues, specialized in a "politics of bad faith"; its counterpart in skulduggery was Richard Nixon; it gave Joe McCarthy the pretext for his *"otherwise* preposterous concept, 'Fifth Amendment Communists'" [my italics] and Sidney Hook the pretext for his more sophisticated version of McCarthyism. But finally, as Bentley perceives his argument beginning to falter, he protests "less that some people's silence was in bad faith than that the good faith of what was no doubt the large majority of unfriendly witnesses before HUAC was brought into question by the bad faith of others." Nor will Bentley leave it at that: silence "was rendered suspect and ambiguous" by the Communists, and he even goes so far as to hint of treason.

The thesis is familiar enough; what makes it so dismaying and perplexing is that it should appear in such a book as this, which is nothing but a compendium of refutation of that very thesis. This is not the place for a reprise of the arguments that did so much to dampen the moral and intellectual atmosphere of the time. But it may be useful for the young or the forgetful to say yet again that in that bleak time mere "membership" was a crime; that mere "advocacy" was a crime; that the First Amendment was no defense; that all it took was a scurrilous, anonymous letter, the word of a bought-and-paid-for informer and perjurer; that the rules, procedures and statutes were rigged so that a witness was hopelessly ensnarled; that the victim of a "mere" subpoena was as good as dead professionally and not infrequently literally (the full body count of suicides and coronaries awaits its actuary); that employers (both institutional and private, federal, state and municipal)—to say nothing of landlords and insurance brokers—fell all over themselves to comply with the faintest whisper of their masters' voices. A

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nod of the head, a look askance would do.

Indeed the sentence above would have seemed, at the very least, "suspect and ambiguous" then, if not the clearest sign; and if it seems so now, there's the evidence that the cloud has not lifted. Such were the times; and Bentley appears to have forgotten—possibly because as a certified anti-Communist socialist he would not have been summoned, and, worse still, if he had been, the Committee would have been rather pleased to hear—after listening with less than shock to his denunciations of itself—that at bottom, once the clever, donnish distinctions had been screened out by their inattention or incomprehension, his view of the Fifth was not all that different from their own—and his view of the CP, because saner and infinitely better informed, in a way more deadly than their own.

The truth is there is only one Fifth Amendment—for you and me and Bentley; for swindlers and saints; for mafiosi and Stalinists and radical martyrs. It is the only Fifth Amendment we have; and the bad faith which is second nature to Stalinists lay more heavily on those selective libertarians of that period and this who must have thought there were really two—one for them and one for us. Bentley's touting of radical "candor" sounds in the context punitive and vengeful, arrogant and melodramatic, mere posturing; or amnesiac, a failure of historic memory. Suppose those men of bad faith had "disdained to conceal their views." Who would have listened to their rotund proclamations? The Committee? *That* would have been a great awakening; besides, by the entrapping rules they contrived, even the ritual preliminary "statements" were disallowed. Who else? Bentley? Not bloody likely. And if he had, what would he have done—congratulated them for their "candor"? And then what? This is disingenuous—suspect and ambiguous.

Bentley, if anything, is calling for theater; but even here his critical sense fails him, for that would have been bad theater, theatrics, the worst kind of agit-prop. Secure in their lives and positions, Bentley and others like him had the gravest, the most solemn obligation to support those whom and that which they most hated—not grudgingly, dutifully, by-the-book, but with passionate conviction; and yes, in full knowledge that the Stalinists would not have supported him in their place any more than they did the Minneapolis Trotskyists—indeed would have cheered as the hangmen closed in. Life on the Left is a hard life.

Bentley prefers easy positions: his heroine (and mine) is Dagmar Wilson of Women Strike for Peace. Some cretin on the Committee made the imbecile blunder of hauling her before its kangeroo court, and Mrs. Wilson, after making them rue the day, left them for dead, as anyone who knows anything at all about radical politics could have told them she would. Her political life, the whole of it, was all the way out in the open, and there was no reason in law or custom why it shouldn't be. War and peace was the issue; Vietnam was the immediate catalyst; the Warren Court had already intervened in the series of landmark decisions which had the effect of largely disarming HUAC; the national atmosphere had changed decisively; and to admire Dagmar Wilson was no great virtue. But she is not the whole cast of characters in the period 1938-68; and when HUAC and the subpoena reigned supreme, witnesses did not have her options, and often they had no options at all. To put it in simplest terms: was prison worth a harangue—bombast, Ciceronian orations and tattered apologetics—which no one, including Bentley, would have heeded?

Apart from all this, Bentley has provided us with an alloy, in streaks depressing and exhilarating, of the stuff we are made of. To make the unmanageable proportions of the mother-lode packageable, he excludes in the main all categories of witness save artists and intellectuals; and these are selected and edited with a view to revealing the man beneath the witness, and the human dramas that were played out in the interaction of witness and inquisitor: the classics of McCarthyism (to extend the term only slightly) revisited; folklore, myths, parables and fables we should teach our children to read by.

They're all here, those ghosts of the remote present: the minutemen and mini-people, the "friendly" witnesses, buglers and drummers, scourges and defenders of the faith in two categories: the superpatriots (Ronald Reagan, Ayn Rand, Gary Cooper, Adolphe Menjou, and others of those stripes, red, white and blue); and the sinners and repentants, humbly begging the Committee's pardon for having risen in the morning, retired at night, pleading to be allowed to cut off the hand that had signed the petition, to curse the coins given to Spanish War Relief and offer in token of earnest the guest-list of the Beverly Hills cocktail party at which the speeches were made, the coins solicited, the pamphlets distributed. Edward Dmytryk, José Ferrer, Budd Schulberg, Elia Kazan, Clifford Odets, Edward G. Robinson, Lee J. Cobb . . . the name-dropping virus is contagious, and I must stop. So, to purge themselves, they took to the hustings—the American Legion, the Rotary Clubs, the DAR, the Boy Scouts, the 4-H Clubs, wherever true sons and daughters of liberty foregathered—and there they did their tale unfold, at the Committee's behest, and script provided, as a sign of their wondrous conversion, their lives a monitory lesson to the American people. Once I was a leper, but the Committee healed me. Look upon my scabs and learn.

Intellectuals helped out too: Robert Gorham Davis, Daniel Boorstin, others. No, of course we cannot let loose in the classroom Fifth Amendment Communists—the hook, line and sinker, which I suppose would make them hookers. There are moments of delicious comedy. Joshing amiably with Boorstin, Committeeman Kit Clardy, that revenant from limbo, remarks folksily that Boorstin understandably joined the Party because he thought it opposed anti-Semitism but now (1955) he knows it is itself violently so, indeed "almost as much as the Nazi Party was, and perhaps more so."

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(Certainly an element of truth here, especially with the "Doctors' Plot" still reverberating.) "Yes, sir," Boorstin replies. "The best reason in the world," Clardy continues, "why that sort of folks should not go under [sic] the Communist Party, is it not?" "Yes, sir," Boorstin repeats. Jews, who have been called everything else, became in the glowing locker-room atmosphere provided by cooperative witnesses "that sort of folks." Wily Clardy—something told him that in some mouths the very *word* Jew sounds like a death-knell, but "that sort of folks" is almost as nice as "our sort of folks." The lingo is peculiarly apt: the Committee itself was a species of folks, jes' folks in possession of awesome power; the boosters, rotarians, courthouse lawyers and hardware salesmen—our neighbors—in the seats of judgment.

And just as your heart is about to break of despair, there are the decent, dignified, honorable, sometimes furiously unfriendly witnesses: Lionel Stander, stampeding mad that these worms in collusion with the Hollywood worms should oust him from his life-long profession, deny him livelihood; Pete Seeger, who repeatedly offered to sing songs for the Committee—the truth of his life lay in his songs, and if they wanted the truth—well, he happened to have his banjo with him; Ring Lardner, Jr., who was simply trying to say that what he thought and believed and whom he chose to associate with was in fact none of their damned business—which was and remains, after all the political-legal-historical arguments have been duly recited, the best reason in the world for silence; a matter, finally, of manners and morals.

What the Committee could do to people still makes, a generation later, unbearably painful, sordid reading—true obscenity. A few instances must suffice, providing you keep multiplying until you have aggregated them into an epoch in our history, and an expression on a large scale of a permanent incipiency in the national life. Larry Parks, an inconsequential actor and middling sort of man, tries pitifully to

retain a scrap of dignity: he's willing to talk about his own wayward youth but resists implicating others. He begs and wheedles, pleads and grovels, to the point where one can't stand it; one wants to turn away, as much in pity as contempt, and stop up one's ears. It would be too much to say the Committee loved it: they were, in clinical terms, like any psychopath, without affect. Parks will give them anything at all about himself, but he begs them not to "press" him for names—in session after session, page after harrowing page. Round and round they go, easing him toward the sticking point, where the pleading begins again, and they wait him out and begin the water treatment again. Parks could scarcely have heard what he was saying: the metaphor he uses—over and over again—is that of prostration, abject surrender. He has, he keeps saying, "opened himself as wide as possible to the Committee." He certainly has; and they screwed him, coldly, mechanically, without passion or even satisfaction. I say this in all sobriety: we have from the beginning been witnessing a rape, nothing else. Parks walked into the charnel house, supposing in his country-girl innocence, that they would let him walk intact; but they knew their man better than he knew himself. Pimps are said to have an eye for such things. When, finally, Parks started to crack he came unstuck in a desperate frenzy of self-abasement, withholding nothing, naming and naming, pressing upon the Committee letters, affidavits, testimonials, promising henceforth always to be a good girl. As Parks says, he is "probably the most completely ruined man you have ever seen." As in the old pornographic novels, once a girl has lost her virtue, she might as well, if she is clever and ambitious, make a good thing of it. A nation able to watch calmly (indeed avidly) this spectacle, like a country able to watch the B-52's on prime time, is sick unto death.

That same year, 1951, Sterling Hayden, another minor actor, gave a shoddy command performance, with the difference that his was straight-up—distinct responses to distinct questions, no begging, no crawling, just simple, supine compliance—informing without tears or even the appearance of anguish. In 1963, in his autobiography, *Wanderer,* Hayden releases the accretions of a dozen years. He wants the world to know that he could tell it a lot about the people he knew in the Party and it "would all be good"; that the "real subversives" are the "loud-mouthed self-styled patriots." And then in an ecstasy of self-hatred which must be quoted unexpurgated if the rich emotion (as well as the torment and comedy) is to be conveyed, he writes: "I'll say this too, that if it hadn't been for you I wouldn't have turned into a stoolie for J. Edgar Hoover. I don't think you have the foggiest notion of the contempt I have had for myself since the day I did that thing . . . F . . . it! And f . . . you too." The "you" whom he addresses is his psychoanalyst, a specialist in what was called in the parlance of the period "adjustment." Autres temps, autres moeurs.

Man, had they ever changed, the times and the manners. Seismically. A year earlier, Dagmar Wilson had roasted the Committee; but a decade earlier it would have known better than to summon her in the first place. By the latter 1960's HUAC's day was over, a puny institution in an advanced state of rot, an embarrassing joke, surviving on sheer inertia and the fixed habits of a pusillanimous Congress. The people who put paid to its final pretensions were some young radicals (Maoists, Yippies) and political clowns who jumped at the chance to off the pigs; and some serious radicals who delivered

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The 10 most distinguished books of 1971 are in this list.

ARTS AND LETTERS

M. H. ABRAMS–Natural Supernaturalism: Tradition and Revolution in Romantic Literature, *W. W. Norton & Co.*

JAMES DICKEY–Sorties, *Doubleday & Co.*

THOMAS R. EDWARDS–Imagination and Power: A Study of Poetry on Public Themes, *Oxford Univ. Press*

NORMAN FRUMAN–Coleridge, The Damaged Archangel, *George Braziller*

CÉSAR GRANA–Fact and Symbol: Essays in the Sociology of Art and Literature, *Oxford Univ. Press*

B. H. HAGGIN–Ballet Chronicle, *Horizon Press*

NATHAN IRVIN HUGGINS–Harlem Renaissance, *Oxford Univ. Press*

IRIS ORIGO–Images and Shadows: Part of a Life, *A Helen and Kurt Wolff Book/Harcourt Brace Jovanovich*

CHARLES ROSEN–The Classical Style: Haydn, Mozart, Beethoven, *The Viking Press*

JOHN SIMON–Movies into Films: Film Criticism, 1967-1970, *The Dial Press*

BIOGRAPHY

JOHN CODY–After Great Pain: The Inner Life of Emily Dickinson, *The Belknap Press of Harvard Univ. Press*

EMILY FARNHAM–Charles Demuth: Behind a Laughing Mask, *Univ. of Oklahoma Press*

DAVID FREEMAN HAWKE–Benjamin Rush: Revolutionary Gadfly, *The Bobbs-Merrill Co.*

RALPH KETCHAM–James Madison: A Biography, *The Macmillan Company*

JOSEPH P. LASH–Eleanor and Franklin: The Story of Their Relationship, Based on Eleanor Roosevelt's Private Papers, *W. W. Norton & Co.*

HARDING LEMAY–Inside, Looking Out: A Personal Memoir, *A Harper's Magazine Press Book/Harper & Row*

D'ARCY McNICKLE–Indian Man: A Life of Oliver La Farge, *Indiana Univ. Press*

RONALD PAULSON–Hogarth: His Life, Art and Times, Volume II, *Yale Univ. Press*

LACEY BALDWIN SMITH–Henry VIII: The Mask of Royalty, *Houghton Mifflin Co.*

BARBARA W. TUCHMAN–Stilwell and the American Experience in China, 1911-45, *The Macmillan Company*

CHILDREN'S BOOKS

JAN ADKINS–The Art and Industry of Sandcastles, *Walker & Company*

DONALD BARTHELME–The Slightly Irregular Fire Engine or The Hithering Thithering Djinn, *Farrar, Straus & Giroux*

JOHN DONOVAN–Wild in the World, *Harper & Row*

VIRGINIA HAMILTON–The Planet of Junior Brown, *The Macmillan Company*

JUNE JORDAN–His Own Where, *Thomas Y. Crowell Co.*

URSULA K. LE GUIN–The Tombs of Atuan (Illus. by Gail Garraty), *Atheneum*

ROBERT C. O'BRIEN–Mrs. Frisby and The Rats of Nimh (Illus. by Zena Bernstein), *Atheneum*

CHELI DURÁN RYAN–Hildilid's Night (Illus. by Arnold Lobel), *The Macmillan Company*

MARILYN SACHS–The Bears' House (Illus. by Louis Glanzman), *Doubleday & Co.*

WILLIAM STEIG–Amo. & Boris, *Farrar, Straus & Giroux*

CLYDE WATSON–Father Fox's Pennyrhymes (Illus. by Wendy Watson), *Thomas Y. Crowell Co.*

CONTEMPORARY AFFAIRS

STEWART BRAND–The Last Whole Earth Catalog: Access to Tools, *Portola Institute*

RONALD J. GLASSER–365 Days, *George Braziller*

RICHARD HAMMER–The Court-Martial of Lt. Calley, *Coward, McCann & Geoghegan*

LARRY L. KING–Confessions of a White Racist, *The Viking Press*

NORMAN MAILER–The Prisoner of Sex, *Little, Brown and Co.*

VICTOR S. NAVASKY–Kennedy Justice, *Atheneum*

DON OBERDORFER–Tet!, *Doubleday & Co.*

MIKE ROYKO–Boss: Richard J. Daley of Chicago, *E. P. Dutton & Co.*

WILLIAM IRWIN THOMPSON–At the Edge of History, *Harper & Row*

TOM WOLFE–Radical Chic Mau-Mauing The Flak Catchers, *Farrar, Straus & Giroux*

FICTION

FREDERICK BUECHNER–Lion Country, *Atheneum*

E. L. DOCTOROW–The Book of Daniel, *Random House*

STANLEY ELKIN–The Dick Gibson Show, *Random House*

TOM McHALE–Farragan's Retreat, *The Viking Press*

JOYCE CAROL OATES–Wonderland, *Vanguard Press*

FLANNERY O'CONNOR–The Complete Stories, *Farrar, Straus & Giroux*

CYNTHIA OZICK–The Pagan Rabbi and Other Stories, *Alfred A. Knopf*

WALKER PERCY–Love in the Ruins: The Adventures of a Bad Catholic at a Time Near the End of the World, *Farrar, Straus & Giroux*

EARL THOMPSON–A Garden of Sand, *G. P. Putnam's Sons*

JOHN UPDIKE–Rabbit Redux, *Alfred A. Knopf*

HISTORY

JOHN MALCOLM BRINNIN–The Sway of the Grand Saloon: A Social History of the North Atlantic, *Seymour Lawrence/Delacorte Press*

CARL N. DEGLER–Neither Black Nor White: Slavery and Race Relations in Brazil and the United States, *The Macmillan Company*

OSCAR & MARY F. HANDLIN–Facing Life: Youth and the Family in American History, *Atlantic Monthly Press/Little, Brown*

ELIZABETH JANEWAY–Man's World, Woman's Place: A Study in Social Mythology, *William Morrow and Co.*

HOWARD MUMFORD JONES–The Age of Energy: Varieties of American Experience, 1865-1915, *The Viking Press*

CLARENCE G. LASBY–Project Paperclip: German Scientists and the Cold War, *Atheneum*

SAMUEL ELIOT MORISON–The European Discovery of America: The Northern Voyages, A.D. 500-1600, *Oxford Univ. Press*

ALLAN NEVINS–Ordeal of the Union Series–Vol. VII, The War for the Union: The Organized War, 1863-64 **Vol. VIII, The War for the Union:** The Organized War to Victory, 1864-65, *Charles Scribner's Sons*

DAVID J. ROTHMAN–The Discovery of the Asylum: Social Order and Disorder in the New Republic, *Little, Brown and Co.*

RAYMOND J. SONTAG–A Broken World, 1919-1939, *Harper & Row*

PHILOSOPHY AND RELIGION

ROBERT N. BELLAH–Beyond Belief: Essays on Religion in a Post-Traditional World, *Harper & Row*

NOAM CHOMSKY–Problems of Knowledge and Freedom, *Pantheon Books*

PHILIP GARVIN & ARTHUR A. COHEN–A People Apart: Hasidism in America, *E. P. Dutton & Co.*

JOEL KOVEL–White Racism: A Psychohistory, *Pantheon Books*

WILLIAM G. McLOUGHLIN–New England Dissent, 1630-1883, Vol. II The Baptists and the Separation of Church and State, *Harvard Univ. Press*

MARTIN E. MARTY–Righteous Empire: The Protestant Experience in America, *The Dial Press*

JAROSLAV PELIKAN–The Emergence of the Catholic Tradition (100-600), *University of Chicago Press*

JOHN RAWLS–A Theory of Justice, *The Belknap Press of Harvard Univ. Press*

ERNEST R. SANDEEN–Roots of Fundamentalism: British and American Millenarianism, 1800-1930, *University of Chicago Press*

B. F. SKINNER–Beyond Freedom and Dignity, *Alfred A. Knopf*

POETRY

A. R. AMMONS–Briefings: Poems Small and Easy, *W. W. Norton & Co.*

JON ANDERSON–Death & Friends, *University of Pittsburgh Press*

ROBERT FITZGERALD–Spring Shade: Poems 1931-1970, *New Directions*

ROBERT HAYDEN–Poems in the Mourning Time, *October House*

JOHN HOLLANDER–The Night Mirror, *Atheneum*

GALWAY KINNELL–The Book of Nightmares, *Houghton Mifflin Co.*

HOWARD MOSS–Selected Poems, *Atheneum*

FRANK O'HARA–The Collected Poems of Frank O'Hara, *Alfred A. Knopf*

DAVID SHAPIRO–A Man Holding an Acoustic Panel, *E. P. Dutton & Co.*

ALLEN TATE–The Swimmers and Other Selected Poems, *Charles Scribner's Sons*

JAMES WRIGHT–Collected Poems, *Wesleyan Univ. Press*

THE SCIENCES

ELIZABETH BARLOW–The Forests and Wetlands of New York City, *Little, Brown and Co.*

BARRY COMMONER–The Closing Circle: Nature, Man and Technology, *Alfred A. Knopf*

NATHAN G. HALE, JR.–Freud and the Americans: The Beginnings of Psychoanalysis in the United States, 1876-1917, *Oxford Univ. Press*

BRUCE C. HEEZEN & CHARLES D. HOLLISTER–The Face of the Deep. *Oxford Univ. Press*

DAVID LEVESON–A Sense of the Earth, *Natural History Press*

JOHN McPHEE–Encounter with the Archdruid, *Farrar, Straus & Giroux*

NORMAN MAILER–Of a Fire on the Moon, *Little, Brown and Co.*

GEORGE L. SMALL–The Blue Whale, *Columbia Univ. Press*

CHARLES A. WHITNEY–The Discovery of Our Galaxy, *Alfred A. Knopf*

EDWARD O. WILSON–The Insect Societies, *The Belknap Press of Harvard Univ. Press*

TRANSLATION

TRANSLATOR

E. B. ASHTON–Philosophy, Volume 3, by Karl Jaspers, *Univ. of Chicago Press*

CHARLES BOER–The Homeric Hymns, *The Swallow Press Inc.*

ALBERT HOFSTADTER–Poetry, Language, Thought by Martin Heidegger, *Harper & Row*

RALPH MANHEIM–Bound to Violence by Yambo Ouloguem, *A Helen and Kurt Wolff Book/Harcourt Brace Jovanovich*

HERBERT MASON–Gilgamesh: A Verse Narrative, *Houghton Mifflin Co.*

RAYMOND ROSENTHAL–Cancerqueen and Other Stories by Tommaso Landolfi, *The Dial Press*

RICHARD SHELDON–Zoo or Letters Not About Love by Viktor Shklovsky, *Cornell Univ. Press*

AUSTRYN WAINHOUSE–Chance and Necessity: An Essay on the Natural Philosophy of Modern Biology **by Jacques Monod,** *Alfred A. Knopf*

RICHARD WILBUR–The School For Wives by Moliere, *Harcourt Brace Jovanovich*

RICHARD AND CLARA WINSTON–Letters of Thomas Mann 1889-1955, *Alfred A. Knopf*

These 102 distinguished books have been nominated for the 23rd Annual National Book Awards. Only one winner will be named for each of the ten categories. The winners will be announced on April 11th. And on April 13th, at a ceremony in Alice Tully Hall at New York's Lincoln Center, each winning author will receive a prize of $1,000 in recognition of outstanding achievement.

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INTERNATIONAL BOOK YEAR 1972

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a short course in decorum (Tom Hayden, Rennie Davis, Dave Dellinger). On the whole, *because* the Committee was by then a dirty joke, the buffoons were far more deadly, Jerry Rubin, that old hoofer prancing about in his vaudeville costume, being the emblematic figure. The "kids" laughed them to death; the Committee was helpless. What could it do—*expose* them? Exposure—of themselves and of the Committee—is what they sought. There were no mortgages to pay off, no careers to husband, no livelihoods at stake.

If one had to choose from the repertory of that political cabaret the moment when death set in irreversibly, this one might serve. The late Hon. Joe Pool of Texas was presiding; Steven Cherkoss of the Progressive Labor Party was in the dock. Cherkoss, having begun by proclaiming that "this system has got to go" and referring to his interlocutor as "Joe Fool," interrupted the proceedings with slapstick: "Will you repeat the question? I can't understand this fellow's accent. Is there someone speaking who isn't a racist, that speaks with a more American accent?" But poor Pool, perfectly cast as patsy and fall-guy, short, fat, dumb, vague, a deputy sheriff out of his depth, had by then forgotten what the question was; disconcerted, stumbling, he has to ask his counsel what it was. Counsel consults his notes. Oh, yes, the question. Now where's the question? I know it's somewhere, I remember putting it . . . ah, yes, here's the question. Line by line, almost in disbelief, we watch the three-decade-long balance of power shift.

For a moment we feel jubilation—until we remember it is the way with balances that having shifted once they can shift again.

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REVIEWERS

SAUL MALOFF, a regular contributor, has just completed a new novel.

RONALD H. STONE, Associate Professor of Social Ethics at Pittsburgh Theological Seminary and author of *Reinhold Niebuhr: Prophet to Politicians* (Abingdon), is presently studying political philosophy at Cambridge.

The Berrigans et al.

The Berrigans

WILLIAM VAN ETTEN CASEY, S. J. & PHILIP NOBILE, EDS.

Praeger, $6.95

Suspect Tenderness: The Ethics of the Berrigan Witness

WILLIAM STRINGFELLOW & ANTHONY TOWNE

Holt, Rinehart, $5.95

The Geography of Faith: Conversations Between Daniel Berrigan, When Underground, and Robert Coles

Beacon Press, $7.50

U.S. vs. The Harrisburg 8

OCCASIONAL PAPERS ON THE CHURCH AND CONFLICT, NO. 7

United Presbyterian Church, 85¢ (paper)

RONALD H. STONE

The Berrigan brothers and their friends in the campaign to confront the violent tendencies of U.S. society with truth and suffering have caused sensitive America to react. These priests and their allies, mostly Roman Catholic, provide in these days of our long, hard winter of discontent within the movement a beacon to a new way of confronting power with truth. In the movement and without, many have rekindled their efforts at waging peace because of the words and actions of these men. Their sign, to use Robert McAfee Brown's categories, has renewed many other forms of protest. The possibility that their action is also a model of nonviolent civil disobedience to be followed by those serious about peace has caused much soul-searching in the movement and revealed sources of guilt in those who have taken an easier road against the government's slaughter in Southeast Asia.

Their persistent resistance to the war-making government of the United States has been the most dramatic and perhaps the best interpreted war protest action of the conflict. Historians of the religious elements in this conflict will certainly see them and the Buddhist activists as the most creative of the religiously inspired resisters to U.S. policy. The government of the Nixon Administration realizes the degree to which this religious protest threatens to delegitimize their Graham- and Peale-blessed war and they have branded these men as more dangerous than the Mafia. In a profound sense they are correct in their assessment. The Mafia represents no threat to the Pentagon-University-Industrial-Church conglomerate, whereas the Berrigans would lead in the dismantling of the empire, if they could. By stating boldly and clearly that the policies which produced the American war in Asia are out of harmony with Christian life and democratic values, they threaten the whole enterprise.

The literature, particularly Philip Nobile's essay "Phil Berrigan in Prison" in Casey and Nobile and the Introduction to Coles and Berrigan, makes clear how much punishment the government has already inflicted upon these men. The charges involved in the Harrisburg indictments demonstrate that the government would like to keep these moral martyrs imprisoned for life. The future of these men rests upon the outcome of the trial, appeals, and the willingness of a new government to consider amnesty.

Father Casey's and Philip Nobile's book, a revision of the brilliant *Holy Cross Quarterly* of January 1971, documents the sacramental-charismatic impact of the Berrigans upon those whom they touch. The differences within the Society of Jesus are displayed by the pieces by Duff, Clifford and Casey. Noam Chomsky argues the appropriateness of their actions and refutes the

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attack upon the Berrigans by Father Greeley which appeared in the original *Quarterly*. Protestant readers will be pleased by the sympathetic essay by Robert McAfee Brown. The piece by John C. Raines, a professor at Temple, reveals how the witness of the Berrigans caused him to repent of the proudly held political realism and helped to reorient his philosophy toward life. Other particularly helpful pieces by Gordon C. Zahn, Rosemary Radford Ruether, Philip Nobile and Robert Coles all raise in a penetrating way how the Berrigan brothers provoked a challenge to deepen one's efforts at war resistance. In a recent meeting in New York representatives from Protestant seminaries discovered that the Berrigans, and particularly the Harrisburg trial, were responsible for most of the peace activism that was still moving campuses. Those who would inquire as to why the Berrigans move the hearts of Protestant seminarians will find the answers in this book of very personal responses to their witness.

The Stringfellow-Towne volume is peculiarly named. The title, *Suspect Tenderness: The Ethics of the Berrigan Witness,* leads one to expect a book which will either suspect tenderness or discuss in a rigorous way ethical questions of destructive, nonviolent (to persons) resistance and the Berrigans. Unfortunately the book is about the Stringfellow and Towne experience of harboring Daniel Berrigan and their ensuing trial. A better title for the volume would be *The Block Island Two.* The book deserves to be read by those interested in the Stringfellow-Towne case, but it is not a significant contribution to the study of the Berrigan ordeal. The center of the book consists of four papers by Stringfellow revealing dramatic movement from theological imagery to suggested styles of politics. The political stance of attempting to find new ways to transform our current policies of cold-war death and third-world exploitation through symbolic nonviolent action at home is profound. Part of its success will depend on traditional means of beguiling this old country to better political policies than it would choose via public referendum. Stringfellow's abhorrence of the use of violence, though, obscures more careful ethical reflection. His claim that: "Revolutionary violence which overthrows the violence of the State can itself only become a regime of violence" (p. 83) is repeated in different words elsewhere in the book, and it ignores many relatively stable governments which were founded in violence. If his point were simply that all human political organizations, including the church, are rooted in violence, then he would be making a true claim, but the claim would not count as he wants it to against all uses of revolutionary violence.

Stringfellow sometimes shares with the Berrigans a conviction that all of the protests against the war "had been of little or no avail" (p. 75). This pessimism that eight years of protest have accomplished nothing seems ironic in a man who believes as strongly as Stringfellow does in the resurrecting power of Christ in the world. Theology aside, however, the public record is full of the effect the protest has had in slowing down the American commitment to Vietnam and in prematurely driving one cold warrior out of the Presidency. *The Pentagon Papers* reveal again and again how generals and policy-makers had their Vietnam madness restrained by the public outcry. The situation is that the peace movement has not yet succeeded, and that it could never have succeeded by itself. Economic necessities, military stalemate, Saigon debauchery and ineptitude, NLF fortitude, North Vietnamese courage and skill, Chinese and Russian aid, misinformation, scandal, and war crimes have all contributed their bit to forcing this mighty U.S. power to redefine its objectives and prepare for inevitable defeat. The Pentagon does not know how to fight a counter-insurgency war in Vietnam, and the peace movement does not know how to stop the Pentagon from trying. Thousands more will be killed, but the U.S. part in the struggle will be terminated

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and Asians will determine their own political structures, if not by 1972 then by 1976. We have not always been wise in the peace movement, but to say all our activity has been to no avail is to misread history.

Stringfellow and Towne are certainly correct in their understanding that a Christian ought to shelter fugitives from the war whose actions they approve of even if their actions have been found to be illegal. A church in Pittsburgh, The Community of Reconciliation, has explicitly covenanted to stand with its members who recognize the sheltering of refugees from the FBI or police who are fleeing for acts of conscience against the war. Its stand is almost a necessary consequence flowing from its own formal declaration that the American war in Vietnam is immoral and that its members should not serve in that war. Refugees from this conflict must be provided for as we would provide for Christ himself, but the recognition of this obvious truth is far from being realized by organized Christendom in the United States.

Stringfellow and Towne have provided another chapter in the literature of the movement by their actions and their books. At the present the Christian part of the movement is a little strong on exciting theological imagery and a little weak on political analysis and careful work in social philosophy.

The Geography of Faith moves people to examine their faith, their families, their professions, their nation, and their whole understanding of the world. The Coles-Berrigan dialogue is a very American piece in a time when the spiritual underpinnings of the nation are in tatters. The psychiatrist reluctantly dragged into the Berrigan-United States conflict reveals himself in the interview; his hopes and his fears are ours and almost as if in a confessional his soul is exposed. Daniel Berrigan, the activist, is probed to reveal that at bottom he is a priest, revolted by injustice and violence, who in his own way is imitating Christ. The volume is closer to the genre of devotional literature than to that of political literature, but it is a must for the reading of all Chrisian political activists today. Even though I concede that my words cannot persuade Christian readers to take its story to heart, I can and will, in the manner of the rather unreconstructed educator I am, assign it as required reading in the introductory course in political ethics at Pittsburgh Theological Seminary. The dialogue is almost a hymn, singing of the pathos of American life, but in the very insight of the writers revealing that not all has gone wrong in the church in the United States.

Daniel exhibits in his life the mixture of Christian tentativeness and Christian passion which they discuss in the closing pages of the book. It is that mixture which drove him through many legal forms of dissent against the war before he was persuaded of the need for illegal Christian resistance to the war. So it is in lives that fight wisely for life.

A remaining ambiguity of the book is the need for twice-born men, or men of compassion, before American political life can be redeemed. Sometimes Berrigan seems to be saying that the massive violence cannot be stopped until men are new men. Sometimes he admits to being utopian but other times he denies that he sees widespread appearance of signs of hope. He even asks how could he "realistically" claim widespread signs? The problem is not Daniel Berrigan's alone; we always will need men of more compassion. Our ideal visions, until the coming of the Kingdom of God, will always outrun our real communities. We must not allow men to settle into their sin. However, within politics, do we not have to assume we will continue to deal with men who are both sinners and saints? Is not our need for a politics that will enable us to stop the massive violence with the people we have? We dare not suggest, because we want to reduce men's and women's alienation, that only when that alienation has been ended can we stop massive murder and destruction. The possibilities of human life and of increasing human sensitivity are great, but we will need to implement policies which maximize this potential with the old alienated man and with very few heroes. Our agenda, an agenda to which one hopes Daniel Berrigan will contribute even more than he already has is the transformation of the structures of our society so that they are less dehumanizing.

Edward L. Long, Jr.'s pamphlet on the trial of the Harrisburg 8 brings the Berrigan saga up to date. The announcement that the American Society of Christian Ethics is considering the case, even now as this is written and the trial in Harrisburg goes on, bodes well that some have been listening to the Berrigan witness. The paper, as distinct from the books discussed above, does not plead the case for or against the defendants. It is an analytic piece designed to encourage discussion of the significant moral and legal issues raised within the trial. The pamphlet provides a vehicle for Christian interpretation of the media's report of the trial. It discusses the nature of conspiracy law, the trial itself, the limits that can be set on the obligation to obey the law, and some suggestions for the healing of the torment of American society.

Long's suggested remedies are in the best liberal tradition as he probes for ways of political healing, of seeking more toleration, of broadening the legal process itself to examine the motives of civil disobedience. In his conclusion he suggests that there are deep issues of religious identity at stake in the issues of the trial. He criticizes American myths and suggests that new public theological understandings are needed.

Though the tone of the criticism of the churches is more mild in Long's paper, his concern for a response of integrity by the church is as deep as that of the Berrigans'. He concludes: "The agenda before the courts pales beside that before the churches. If there is any balm for the new promised land, it had better be discovered now" (p. 51). The churches might be better able to hear Professor Long's plea than Berrigan's query as to why there are not more bishops in jail. But on the other hand this particular request by Professor Long is a direct result of

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the more strident rhetoric and action of Fathers Philip and Daniel Berrigan.

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Steinfels (Cont.)

zeal by the Paris police and deported to the camps because no one would stop the machinery of death once it had been accidentally started. Years later François Mauriac wrote of his first encounter with Elie Wiesel, then a young Israeli journalist. "Our conversation very quickly took a personal turn. It is not always the events we have been directly involved in that affect us the most. I confided to my young visitor that nothing I had seen during those somber years had left so deep a mark upon me as those trainloads of Jewish children standing at Austerlitz station. Yet I did not even see them myself! My wife described them to me, her voice still filled with horror. At that time we knew nothing of Nazi methods of extermination. And who could have imagined them! Yet the way these lambs had been torn from their mothers in itself exceeded anything we had so far thought possible. I believe that on that day I touched for the first time upon the mystery of iniquity whose revelation was to mark the end of one era and the beginning of another." Mauriac did not see, and yet he saw. So many saw, and yet they did not see. Why?

CORRESPONDENCE

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(Continued from page 131)

in this country wanted a revolution.

I am also personally convinced that if social, civil, and economic advances for minority groups were subject to the ballot or a popular opinion poll, they would move even slower than they do. Which brings up a very profound question for a democracy—is the majority always right? And how to act anyway. Our legal and legislative systems are set up to attempt to deal with the rights of minorities, of course, and this very question must be dealt with over and over in any society which attempts a form of self-government for its people.

I myself am lost in the ambiguity of the abortion question. As a *Commonweal* issue on the subject pointed out several years ago, it boils down, finally, to a philosophical question. Even if the moment at which human life begins could be established to the satisfaction of all, any society which fights wars or uses capital punishment cannot say that only God may decide life-or-death issues. Humans make life or death decisions regarding their fellow humans all the time. It is not a question of shall it be done, but how shall it be done.

In the overall context, I find it irrelevant as to whether feminist ethicians represent a majority of women or not; just as I find it irrelevant, except for practical considerations, if the majority of whites in this country prefer to leave non-whites in the seething ghetto. The feminist ethicians are a highly conscious, literate group, and can speak for their own experiences and needs as women. No man or woman, including Ms. Daly, would presume to speak for 100 per cent of any group. During the centuries when men spoke to and for women regarding their needs, the question as to whether or not they represented a majority of women can't come up, because they are not women at all!

I do not mean to disregard the seriousness of abortion morality and civil rights, for if a fetus at some point becomes human, it has the right to state protection of its life. Nor do I wish to imply that Mr. Steinfels is not very sensitive and sympathetic regarding women's liberation. However, just as he has enlightened and educated many women through his writing on many subjects, it is possible now that some of his women readers can add to his understanding on this question. The most enlightening, perhaps in due time, the correct moral and civil answers to this question may not necessarily come from a majority. Indeed the whole question of women's liberation would be peacefully slumbering still, if a majority were needed to revive the movement. Let us listen to all those who speak, and most especially, if it is women of any opinion speaking about themselves as women, and let majorities and minorities be decided in the only way possible in the end—history will finally tell us, after today is gone.

Even our minority President may become a majority one—oh dear, now why did I bring up a depressing thing like that!

JEAN A. MILLER

REPLY: It may seem churlish to disagree both with a critic so moderate as Ms. Miller and a man I admire as much as Richard Neuhaus. But (a) a rereading of my columns would show Ms. Miller that my argument depends on *relative support* for abortion law repeal among men and women and does not turn on either absolute figures nor even on the question of majorities or minorities; and (b) I fear Richard Neuhaus goes a bit overboard with "movement-licensed purveyors of prepackaged radicalism" who go about like lions in the night, spare us, O Lord.

PETER STEINFELS

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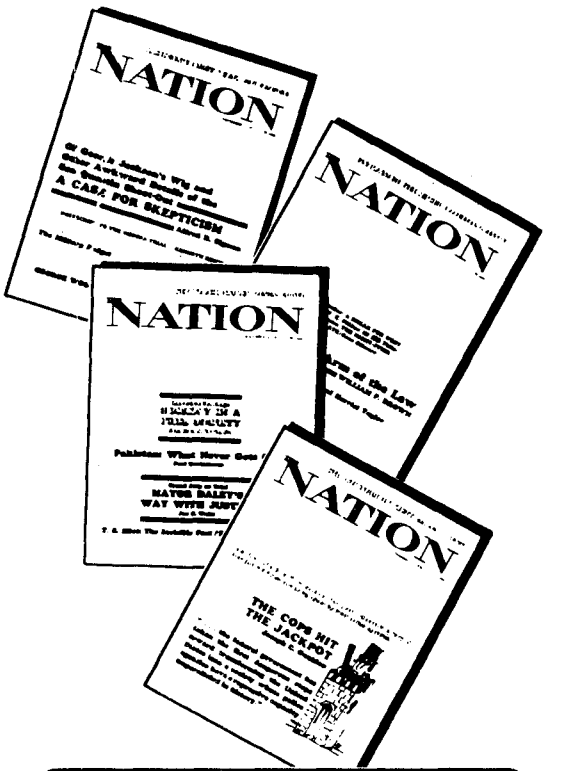

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